

Message Text

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R 221709Z DEC 76
FM AMEMBASSY BONN
TO SECSTATE WASHDC 4265
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INFO USMISSION EC BRUSSELS
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E.O. 11652: N/A
TAGS: TECH, ENRG, GW
SUBJECT: FRG/US AGREEMENT FOR COOPERATION IN GAS-
COOLED REACTORS

REF: (A) BONN 21424; (B) MCDONOUGH/VENER DEC 9 LETTER

1. SUMMARY: ERDA SCIENTIFIC REPRESENTATIVE AND
EMBASSY S&T COUNSELOR DISCUSSED CURRENT STATUS OF SUB-
JECT AGREEMENT WITH OFFICIAL OF FRG MINISTRY FOR
RESEARCH AND TECHNOLOGY (BMFT). FRENCH WISH TO BE
INCLUDED IN AGREEMENT AND HAVE PROPOSED AMENDMENTS TO
TEXT OF PREAMBLE AND TO ARTICLES 1, 7, 10, AND 13.
BMFT FAVORS FRENCH PARTICIPATION BUT BMFT REP EXPRESSED
SOME CONCERN ABOUT REVISIONS OF TEXT WHICH MAKE THE
COOPERATION ASYMMETRIC AND MAY COMPLICATE EXCHANGE OF
RELEVANT DOCUMENTATION. BMFT REQUESTS ERDA COMMENTS
ASAP. FRENCH PROPOSE TRILATERAL NEGOTIATING SESSION
IN BONN TO PREPARE FINAL TEXT. END SUMMARY.

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2. BMFT REP PROVIDED TEXT OF REVISIONS REQUESTED BY
FRENCH. IN FRENCH VIEW, ACCORDING TO BMFT REP, ERDA
WILL FIND IT EASY TO ACCEPT THESE CHANGES BECAUSE THE
LANGUAGE HAS BEEN DRAWN FROM AN ERDA-CEA "GENERAL
NUCLEAR AGREEMENT" NOW UNDER NEGOTIATION. FRENCH DID
NOT PROVIDE FRG WITH COMPLETE TEXT OF THIS ERDA-CEA

AGREEMENT, BUT ONLY WITH THE WORDING OF THE PROPOSED AMENDMENTS. BMFT REP APPEARED MOST CONCERNED ABOUT THE FRENCH PROPOSAL FOR REVISION OF THE SECOND PARAGRAPH OF THE PREAMBLE (SEE BELOW) AND OF ARTICLE I WHICH CREATE AN ASYMMETRY WITH RESPECT TO THE INTERESTS OF THE PARTIES IN THE GAS COOLED FAST BREEDER REACTOR. HE FEARED THAT ACCEPTANCE OF SUCH WORDING WOULD PROBABLY REQUIRE CONSEQUENT REVISIONS OF ALL PARTS OF THE AGREEMENT WHICH COVER THE EXCHANGE OF INFORMATION TO PROVIDE THAT PARTIES NOT PARTICIPATING IN A GIVEN PROGRAM ARE NOT ENTITLED TO RECEIVE INFORMATION ABOUT IT. BMFT CHARACTERIZED MOST OTHER FRENCH REVISIONS AS POINTS FOR CONSIDERATION BY THE LAWYERS. HE SUSPECTS THAT THE FRENCH WOULD NOT PRESS TOO STRONGLY FOR THEIR AMENDMENTS TO ARTICLES 7, 10 AND 13.

3. EMBOFFS SUGGESTED THAT IT MIGHT BE BEST FOR ERDA AND THE BMFT TO SIGN THE AGREEMENT AS NOW DRAFTED AND SUBSEQUENTLY INCLUDE THE FRENCH UNDER TERMS TO BE AGREED, AS PROVIDED BY ARTICLE 4, SECTION 3, PERHAPS IN A TRIPARTITE EXCHANGE OF LETTERS. BMFT REP DOUBTED THAT THIS WOULD BE POSSIBLE. HE HAD MADE THE SAME PROPOSAL TO THE FRENCH THROUGH THE FRENCH NUCLEAR ATTACHE IN BONN. FRENCH HAD RESPONDED THAT THEY DESIRED TO HAVE THEIR PARTICIPATION IN THIS PROGRAM RECOGNIZED FORMALLY IN THE AGREEMENT ITSELF.

4. PROPOSED FRENCH AMENDMENT TO FIRST PARAGRAPH OF THE PREAMBLE:

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QUOTE: THE UNITED STATES ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION (ERDA) AND THE FEDERAL MINISTER FOR RESEARCH AND TECHNOLOGY OF THE FEDERAL REPUBLIC OF GERMANY (BMFT) AND THE COMMISSARIAT A L'ENERGIE ATOMIQUE OF FRENCH REPUBLIC (CEA), HEREINAFTER CALLED THE PARTIES; END QUOTE.

5. PROPOSED AMENDMENT TO SECOND PARAGRAPH OF PREAMBLE:

QUOTE: HAVING A MUTUAL INTEREST IN DEVELOPING GAS-COOLED REACTORS (GCR) IN VIEW OF THEIR POSSIBLE APPLICATION AS HIGH TEMPERATURE GAS COOLED REACTORS (HTR) FOR STEAM PRODUCTION OR DIRECT CYCLE OR PROCESS HEAT OR AS GAS-COOLED FAST BREEDER REACTORS (GCFR); END QUOTE.

6. PROPOSED AMENDMENT TO THIRD PREAMBULAR PARAGRAPH:

QUOTE: RECOGNIZING THE IMPORTANT ROLES OF ERDA, BMFT,
AND CEA IN SUCH RESEARCH AND DEVELOPMENT; END QUOTE.

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PM-04 H-01 PA-01 PRS-01 SP-02 SS-15 USIA-06 /096 W
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7. FOLLOWING AMENDMENTS ARE KEYED TO ERDA TEXT OF
AUGUST 10, AS AMENDED ON NOVEMBER 18: ARTICLE 1, LINE
FIVE: AFTER WORD "PROBLEMS", DELETE PERIOD, ADD COMMA
AND ADDITIONAL PHRASE:

QUOTE: ... DEVELOPED DURING THE RESOLUTION OF THESE
PROBLEMS, IT BEING UNDERSTOOD THAT SOME PROBLEMS MIGHT
BE OF INTEREST FOR ONLY TWO OF THE PARTIES IN WHICH
CASE THE THIRD PARTY WOULD NOT INTERVENE IN THE CO-
OPERATION ON THESE SPECIFIC PROBLEMS. THIS COOPERA-
TION ... END QUOTE.

8. ARTICLE 1, LINE 11: DELETE THE WORD "TWO".

9. ARTICLE 7: REPLACE PARAGRAPH 4 WITH FOLLOWING
TEXT:

QUOTE: IT IS RECOGNIZED THAT THE PRESENT AGREEMENT
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DOES NOT COMMIT ANY OF THE PARTIES TO TRANSMIT TO THE OTHER PARTIES INFORMATION THAT IT CONSIDERS OF A PRIVILEGED NATURE AND WHICH HAS BEEN ACQUIRED OR DEVELOPED PRIOR OR OUTSIDE THE COURSE OF COOPERATIVE ACTIVITIES UNDER THIS AGREEMENT. END QUOTE

10. ARTICLE 7: REPLACE PARAGRAPH 5 WITH FOLLOWING TEXT:

QUOTE: IF, HOWEVER, THE PARTIES AGREE TO TRANSMIT SUCH PRIVILEGED INFORMATION, THE PARTIES SHALL FIRST AGREE, IN A SPECIFIC MEMORANDUM, AND PRIOR TO THE TRANSMISSION, UPON THE PRIVILEGED NATURE OF SUCH INFORMATION AND UPON THE CONDITIONS OF TRANSMISSION. IF THESE PARTIES ARE UNABLE TO AGREE UPON THE PRIVILEGED NATURE OF THE INFORMATION, SUCH INFORMATION SHALL NOT BE TRANSMITTED UNDER THIS AGREEMENT.

11. ARTICLE 7: REPLACE PARAGRAPH 6 AS FOLLOWS:

QUOTE: SUCH PRIVILEGED INFORMATION TRANSMITTED BY ONE PARTY TO THE OTHER PARTIES SHALL BE RESPECTED BY THE RECEIVING PARTY IN ACCORDANCE WITH THE APPROPRIATE MEMORANDUM, AND SHALL NOT, WITHOUT THE CONSENT OF THE ORIGINATING PARTY, BE USED FOR COMMERCIAL PURPOSES OR MADE AVAILABLE TO THE PUBLIC OR BE DISCLOSED TO ANY PERSONS EXCEPT, ON A NEED TO KNOW BASIS, TO:

A) THOSE WITHIN A RECEIVING PARTY,

B) OTHER CONCERNED GOVERNMENTAL AGENCIES OF A RECEIVING PARTY,

C) UNLESS OTHERWISE AGREED IN THE SPECIFIC MEMORANDUM CONCERNING THE SAID INFORMATION, PERSONS EMPLOYED BY A RECEIVING PARTY AND PRIME
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AND SUBCONTRACTORS OF A RECEIVING PARTY FOR USE ONLY WITHIN THE FRAMEWORK OF ITS CONTRACTS WITH THE RESPECTIVE PARTY ENGAGED IN WORK RELATING TO THE SUBJECT MATTER OF THE PRIVILEGED INFORMATION SO DISSEMINATED. END QUOTE.

12. ARTICLE 7: REPLACE PARAGRAPH 7 AS FOLLOWS:

QUOTE: ALL DOCUMENTS CONTAINING PRIVILEGED INFORMATION
WILL BEAR A MARKING RESTRICTING DISSEMINATION AS
AGREED TO BY THE PARTIES. END QUOTE.

13. ARTICLE 10: REPLACE THE ENTIRE ARTICLE WITH THE
FOLLOWING TEXT, REPORTEDLY ACCEPTED BY ERDA ON NOVEM-
BER 19 FOR THE ERDA-CEA AGREEMENT:

QUOTE: 1. WITH RESPECT TO ANY INVENTION OR DISCOVERY
CONCEIVED OR FIRST ACTUALLY REDUCED TO PRACTICE IN THE
COURSE OF OR UNDER THE COOPERATIVE ACTIVITIES UNDER-
TAKEN BY THE PARTIES TO THIS AGREEMENT THROUGH APPLI-
CATION OF ITS IMPLEMENTING PROTOCOLS:

A. IF CONCEIVED OR FIRST ACTUALLY REDUCED TO
PRACTICE BY PERSONNEL OF A PARTY (THE ASSIGNING
PARTY) OR ITS CONTRACTORS WHILE ASSIGNED TO THE
OTHER PARTY (THE RECIPIENT PARTY) OR ITS CON-
TRACTORS IN CONNECTION WITH AN EXCHANGE OF
SCIENTISTS, ENGINEERS, AND OTHER

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SPECIALISTS:

(1) THE RECIPIENT PARTY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION OR DISCOVERY, AND ANY PATENT APPLICATION OR PATENT THAT MAY RESULT, IN ITS OWN COUNTRY AND IN THIRD COUNTRIES, AND

(2) THE ASSIGNING PARTY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION, DISCOVERY, PATENT APPLICATION, OR PATENT IN ITS OWN COUNTRY.

B. IF CONCEIVED, OR FIRST ACTUALLY REDUCED TO PRACTICE BY A PARTY OR ITS CONTRACTORS AS A DIRECT RESULT OF EMPLOYING INFORMATION WHICH HAS LIMITED OFFICIAL USE

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BEEN COMMUNICATED TO IT UNDER THIS AGREEMENT BY THE OTHER PARTY OR ITS CONTRACTORS (BUT NOT OTHERWISE AGREED TO UNDER A COOPERATIVE EFFORT COVERED UNDER PARAGRAPH C.);

(1) THE PARTY SO CONCEIVING OR FIRST REDUCING TO PRACTICE SUCH INVENTION OR DISCOVERY SHALL ACQUIRE ALL RIGHT, TITLE, AND INTEREST IN AND TO SUCH INVENTION OR DISCOVERY, AND ANY PATENT APPLICATION OR PATENT THAT MAY RESULT, IN ITS OWN COUNTRY AND IN THIRD COUNTRIES; AND

(2) THE OTHER PARTY SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST IN AND TO SUCH INVENTION, DISCOVERY, PATENT APPLICATION, OR PATENT IN ITS OWN COUNTRY.

C. FOR OTHER SPECIFIC FORMS OF COOPERATION, INCLUDING EXCHANGES OF SAMPLES, MATERIALS, INSTRUMENTS, AND COMPONENTS FOR SPECIAL JOINT RESEARCH PROJECTS, THE PARTIES SHALL PROVIDE FOR APPROPRIATE DISTRIBUTION OF RIGHTS TO INVENTIONS. IN GENERAL, HOWEVER, EACH PARTY SHOULD NORMALLY DETERMINE THE RIGHTS TO SUCH INVENTIONS IN ITS OWN COUNTRY, AND THE RIGHTS TO SUCH INVENTIONS IN OTHER COUNTRIES SHOULD BE AGREED BY THE PARTIES ON AN EQUITABLE BASIS AND SHOULD NORMALLY PROVIDE FOR A ROYALTY OR SOME OTHER FORM OF COMPENSATION.

D. NOTWITHSTANDING PARAGRAPHS A AND B ABOVE,
IN ANY CASE WHERE ONE PARTY FIRST ACTUALLY
REDUCES TO PRACTICE AFTER THE EXECUTION OF THIS
AGREEMENT AN INVENTION EITHER CONCEIVED BY THE
OTHER PARTY PRIOR TO THE EXECUTION OF THIS
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AGREEMENT OR MADE OR CONCEIVED NOT IN THE COURSE
OF OR UNDER A COOPERATIVE ACTIVITY IMPLEMENTING
THIS AGREEMENT, THEN THE PARTIES SHALL PROVIDE
FOR AN APPROPRIATE DISTRIBUTION OF RIGHTS TAKING
INTO ACCOUNT EXISTING COMMITMENTS WITH THIRD
PARTIES; PROVIDED, HOWEVER, THAT EACH PARTY
SHALL DETERMINE THE RIGHTS TO SUCH INVENTION IN
ITS OWN COUNTRY.

E. IT IS UNDERSTOOD THAT AFTER THE EUROPEAN
PATENT CONVENTIONS HAVE COME INTO FORCE, EITHER
PARTY MAY REQUEST A MODIFICATION OF THIS
PARAGRAPH 1 FOR THE PURPOSE OF ACCORDING EQUIVA-
LENT RIGHTS AS PROVIDED IN SUBPARAGRAPHS 1.A
THROUGH 1. D ABOVE UNDER THE EUROPEAN PATENT
CONVENTIONS.

2. THE PARTY OWNING A PATENT COVERING ANY INVENTION
REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE, SHALL
LICENSE THE PATENTS TO NATIONALS OR LICENSEES OF THE
OTHER PARTY UPON REQUEST OF SUCH OTHER PARTY, ON
NON-DISCRIMINATORY TERMS AND CONDITIONS UNDER SIMILAR
CIRCUMSTANCES. AT THE TIME OF SUCH A REQUEST, THE
OTHER PARTY WILL BE INFORMED OF ALL LICENSES ALREADY
GRANTED UNDER SUCH PATENT.

3. EACH PARTY SHALL TAKE ALL NECESSARY STEPS TO
PROVIDE THE COOPERATION FROM ITS INVENTORS REQUIRED TO
CARRY OUT THE PROVISIONS OF THIS ARTICLE. EACH PARTY

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SHALL ASSUME THE RESPONSIBILITY TO PAY AWARDS OR
COMPENSATION REQUIRED TO BE PAID TO ITS EMPLOYEES
ACCORDING TO THE LAWS OF ITS COUNTRY. END QUOTE.

14. ARTICLE 13: REPLACE PARAGRAPHS 2A, 2B AND 2C
WITH THE FOLLOWING TEXT:

QUOTE: 2A. DAMAGE TO THIRD PARTY

EACH PARTY SHALL BE RESPONSIBLE FOR DAMAGES
OF ANY NATURE CAUSED TO A THIRD PARTY BY EQUIP-
MENT AND STAFF UNDER ITS SUPERVISION AND
CONTROL, EXCEPT IN CASE SUCH DAMAGES ARE CAUSED
BY GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT
OF THE OTHER PARTY OR ITS STAFF. END QUOTE.

15. ARTICLE 13: PARAGRAPHS 2D AND 2E: RELETTER
SUBPARAGRAPHS D AND E AS 2B AND 2C RESPECTIVELY.
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16. EMBASSY COMMENT: WE HAVE NOT YET RECEIVED THE
NEW ERDA TEXT SENT ON DECEMBER 1. EMBASSY HAS
PREPARED CLEAN DRAFT BASED ON VERSION WE NOW HAVE.
ARE SENDING COPY TO ERDA, AND HAVE GIVEN COPY TO BMFT.
SUGGEST THIS DRAFT BE USED AS MASTER COPY FOR CONTINUED
NEGOTIATIONS.

17. BMFT REPS NOTED THAT FRG HAS ALREADY SUBMITTED
TEXT OF BMFT-ERDA AGREEMENT TO THE EURATOM COMMISSION.

EXPECT APPROVAL SOON. IF FRENCH JOIN THROUGH CEA, AS
PROPOSED, IT WOULD NOT RPT NOT BE NECESSARY TO
CLEAR AGREEMENT AGAIN WITH COMMISSION.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NUCLEAR AGREEMENTS, AMENDMENTS, NUCLEAR REACTORS, NUCLEAR COOPERATION PROGRAMS
Control Number: n/a
Copy: SINGLE
Draft Date: 22 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BONN21512
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760469-1047
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761218/aaaaapju.tel
Line Count: 443
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION OES
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 9
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 BONN 21424
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 06 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <06 APR 2004 by ShawDG>; APPROVED <06 APR 2004 by morefirh>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FRG/US AGREEMENT FOR COOPERATION IN GAS- COOLED REACTORS
TAGS: TECH, ENRG, GE, US
To: STATE ERDA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006